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Filing date: **05/10/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|--|-------------|---------|
| Name | National Ophthalmics Corp. | | |
| Entity | Corporation | Citizenship | Florida |
| Address | 6001 Broken Sound Parkway Suite 508 Boca Raton, FL 33487 UNITED STATES | | |

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| Attorney information | Mitchell J. Weinstein Levenfeld Pearlstein, LLC 2 N. LaSalle Street Suite 1300 Chicago, IL 60602 UNITED STATES mjwdocket@lplegal.com Phone:3123468380 |
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Registration Subject to Cancellation

| | | | |
|-----------------|---|-------------------|------------|
| Registration No | 1427351 | Registration date | 02/03/1987 |
| Registrant | R.H. BURTON COMPANY 3965 BROOKHAM DRIVE GROVE CITY, OH 43123 UNITED STATES | | |

Goods/Services Subject to Cancellation

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| Class 010. First Use: 1980/04/30 First Use In Commerce: 1980/04/30 All goods and services in the class are cancelled, namely: HOUSE MARK FOR OPHTHALMIC DIAGNOSTIC INSTRUMENTS AND STRUCTURAL PARTS THEREFOR |
| Class 037. First Use: 1947/11/07 First Use In Commerce: 1947/11/07 All goods and services in the class are cancelled, namely: REPAIR AND RECONDITIONING OF OPHTHALMIC INSTRUMENTS AND EQUIPMENT |

Grounds for Cancellation

| | |
|-------------|--------------------------|
| Abandonment | Trademark Act section 14 |
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| Attachments | Petition for Cancellation of BURTON Reg. No. 1427351.pdf (3 pages)(21894 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-----------------------|
| Signature | /MJW/ |
| Name | Mitchell J. Weinstein |
| Date | 05/10/2010 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of: Registration No. 1,427,351

For the Mark: BURTON

Registered: February 3, 1987

NATIONAL OPHTHALMICS CORP.)

Petitioner,)

v.)

R.H. BURTON COMPANY)

Registrant.)

Cancellation No.: _____

PETITION TO CANCEL

National Ophthalmics Corp., a Florida corporation, with its principal place of business located at 6001 Broken Sound Parkway, Suite 508, Boca Raton, Florida (“Petitioner”), believes it is or will be damaged by the continued registration of Registration No. 1,427,351 on the Principal Register, and hereby petitions to cancel the same pursuant to the provisions of the Lanham (Trademark) Act §14, 15 U.S.C. §1064, and 37 C.F.R. §2.111.

As grounds for cancellation, Petitioner alleges:

1. On August 31, 2009, Petitioner filed United States Trademark Application No. 77/816752, under Section 1(b) of the Lanham Act, to register the BURTON trademark for “ophthalmic diagnostic instruments and structural parts therefore,” and for “repair and reconditioning of ophthalmic instruments and equipment,” based on Petitioner’s intent to use the BURTON trademark in interstate commerce.

2. In an Office Action dated December 10, 2009, the United States Patent and Trademark Office Examining Attorney for Application No. 77/816752 issued a refusal to register Petitioner’s BURTON trademark under Section 2(d) of the Lanham Act based on a likelihood of confusion with Registrant’s registration for a BURTON trademark for a “house mark for ophthalmic diagnostic instruments and

structural parts therefore,” and for “repair and reconditioning of ophthalmic instruments and equipment” (Reg. No. 1,427,351).

3. On information and belief, Registrant has ceased use of the BURTON trademark in interstate commerce in connection with the goods and services cited in Reg. No. 1,427,351, and Registrant does not intend to resume use of the mark in interstate commerce in connection with such goods and services.

4. On information and belief, Registrant has gone out of business.

5. Thus, on information and belief, Registrant has abandoned the BURTON trademark.

6. Petitioner is or will be damaged by the continued registration of Registrant’s abandoned BURTON trademark.

7. Accordingly, based on the foregoing allegations, Registrant’s Reg. No. 1,427,351 for the BURTON trademark is harmful to Petitioner and should be cancelled.

WHEREFORE, Petitioner respectfully requests that its petition be granted in its entirety, and that Registrant’s Reg. No. 1,427,351 for the BURTON trademark be cancelled.

Dated: May 10, 2010

Respectfully submitted,



By:

Mitchell J. Weinstein
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Attorney for Petitioner, National Ophthalmics Corp.

CERTIFICATE OF SERVICE BY MAIL

I, Laura J. Turczak, hereby certify that on the 10th day of May, 2010, I mailed a true and correct copy of this **Petition to Cancel** by United States First Class Mail, postage prepaid, addressed to Registrant's attorney of record at the following address:

Jerry K. Mueller Jr.
Muller and Smith, LPA
Mueller-Smith Bldg.
7700 Rivers Edge Dr.
Columbus, OH 43235



By: _____

Laura J. Turczak